IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

A.S.No.497 of 2000(E)

O.S.NO.55 OF 1995 OF THE COURT OF THE SUB JUDGE, KATTAPPANA

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APPELLANT/PLAINTIFF:-

C.A.M.SIRRAJUDIN, S/O.LATE C.A.MUHAMMED KHANI,
UTHAMAPURAM, CUMBUM TOWN, UTHAMAPALAYAM TALUK,
MADURAI DISTRICT, REP. BY HIS ATTORNEY THOMAS,
S/O.DOMINIC, MUKKUMKAL HOUSE, KUMILY KARA,
KUMILY VILLAGE, PEERUMEDU TALUK.

BY ADV. SRI.P.JACOB VARGHESE
SMT.V.A.GANGUJA

RESPONDENT/DEFENDANT:-

THE KUMILY GRAMA PANCHAYAT,
REP. BY THE SECRETARY,
KUMILY GRAMAPANCHAYAT, KUMILY KARA,
KUMILY VILLAGE.

BY ADV. SRI.S.KRISHNAMOORTHY

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

A.S.No.497 of 2000-E

Dated, this the 1st day of March, 2007

JUDGMENT

The plaintiff in O.S.No.55 of 1995 on the file of Subordinate Judge's Court, Kattappana is the appellant in this appeal. The appellant filed the suit for recovery of possession of the decree scheduled property on the strength of title. The respondent-defendant Panchayat resisted the suit contending that the suit property is Government land which subsequently vested with the Panchayat and as such the plaintiff has no title or possession over the same. A Commissioner was deputed, who identified the property and filed a report and plan. It was set aside and the same Commissioner was deputed again, who identified the property with the help of a Taluk Surveyor. The learned Sub Judge dismissed the suit on the ground that the plaintiff failed to prove title. Challenging that decree and judgment, this appeal is filed.

2. Learned counsel appearing for the appellant submits that the property originally belonged to grandfather of the

appellant, who died long back. It is submitted that in the year 1115 M.E., a partition was effected between the heirs of the deceased in which the property was alloted to the share of the father of the appellant Haji Muhammed Kani. The copy of the partition deed was proved and marked as Exhibit A2. It is submitted that in fact the Court below found that the entire 'C' schedule belonged to Haji Muhammed Kani, but dismissed the suit only on the ground that the appellant did not produce any document to show the devolution of title from Haji Muhammed Kani to the appellant. It is submitted that the appellant succeeded estate of Haji Muhammed Kani in his capacity as the heir of the deceased, but as he was not in station to give oral evidence, oral evidence was tendered by his power of attorney who could not explain the position correctly.

3. Considering the fact that the appellant claim title to 'C' schedule property by inheritance, it is only just and proper that one more opportunity is given to the appellant to prove his case. For that purpose, the matter has to go back. Of course, there is a finding by the trial Court that the respondent-Panchayat has failed to prove its title. Considering

the facts and circumstances of the case, that finding is also liable to be set aside. The Panchayat is also given an opportunity to prove its case on merits. So, the entire matter is to be remanded.

In the result, the appeal is allowed. The judgment and decree passed by the Court below are hereby set aside. The findings on all issues are vacated and the suit is remanded for fresh disposal in accordance with law after giving both sides to adduce further evidence, if any. The parties shall appear in the Court below on 11.4.2007.

K.Padmanabhan Nair
Judge

vku/-